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22 **UNITED STATES DISTRICT COURT**  
23 **NORTHERN DISTRICT OF CALIFORNIA**

24 JOHN BRITTON, EVA JACINTO, CELESTE  
25 FELICE, GLENDA DILLON, STEPHEN  
26 GEARHART, PATRICIA JONES, MELISSA  
27 WARREN, NICOLE SENKPEIL, ENIKO GEDO,  
28 JEREMY YOUNG, RHONDA HUNT MUHAMMED,  
KRISTEN LUIZ, ANTHONY RASPANTINI,  
FRANCINE LEWIS, and MATTHEW KAKOL, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

21 ARC AUTOMOTIVE, INC.,  
22 AUDI AKTIENGESELLSCHAFT,  
23 AUDI OF AMERICA, LLC,  
24 BAYERISCHE MOTOREN WERKE  
25 AKTIENGESELLSCHAFT,  
26 BMW OF NORTH AMERICA, LLC,  
FORD MOTOR COMPANY,  
GENERAL MOTORS, LLC,  
JOYSON SAFETY SYSTEMS,  
DR. ING. H.C. F. PORSCHE AG,  
PORSCHE CARS NORTH AMERICA, INC.,  
TOYODA GOSEI NORTH AMERICA, INC.,  
VOLKSWAGEN AKTIENGESELLSCHAFT, and  
VOLKSWAGEN GROUP OF AMERICA, INC.,

Defendants.

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Case No. 3:22-CV-03053-JD

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS'  
ADMINISTRATIVE MOTION  
TO RE-SET AUGUST 25, 2022  
CASE MANAGEMENT  
CONFERENCE**

1 Plaintiffs hereby submit this Opposition to Defendants' Administrative Motion to Re-Set  
 2 the August 25, 2022 Case Management Conference set for August 25, 2022 at 10:00 a.m. ECF  
 3 Nos. 28 (Reassignment Order Setting CMC), 90 (Defendants' Administrative Motion). Plaintiffs  
 4 filed the initial complaint almost three months ago on May 24, 2022. ECF No. 1. This is the first  
 5 CMC in the above-captioned action and has been scheduled since June 13, 2022. ECF No. 28.  
 6 For the following reasons, the Court should deny Defendants' motion and proceed with the CMC.

7 **A. Legal Standard**

8 Pursuant to this Court's order:

9 Any request to reschedule a case management conference must be made in writing,  
 10 by stipulation if possible, not less than 10 calendar days before the conference date.

11 *Good cause must be shown.* The conference date will not be rescheduled unless the  
 12 Court grants the request. Parties cannot change the date by stipulation.

13 Standing Order for Civil Cases Before Judge James Donato ¶ 7 (emphasis added).

14 **B. The Court Should Not Reschedule the CMC**

15 The Court should deny Defendants' motion because they cannot show good cause for  
 16 rescheduling the CMC, which has been on calendar for over two months. Defendants essentially  
 17 argue that the Court should reschedule the Case Management Conference because Plaintiffs have  
 18 not served all Defendants at this time. This argument is unavailing for two reasons. First,  
 19 Plaintiffs have served all nine U.S.-based Defendants at this time. Plaintiffs served the initial  
 20 complaint on Defendants ARC Automotive, Inc., Audi of America, LLC, Ford Motor Company,  
 21 General Motors, LLC, Joyson Safety Systems, Toyoda Gosei North America, Inc., and  
 22 Volkswagen Group of America, Inc. on May 26-27, 2022. ECF Nos. 19-23, 26-27. Plaintiffs also  
 23 served their First Amended Complaint filed on August 10, 2022, ECF No. 84, on newly named  
 24 Defendants BMW of North America, LLC and Porsche Cars North America, Inc. on August 12,  
 25 2022. ECF Nos. 88-89. No other U.S.-based Defendants need to be served. Plaintiffs intend to  
 26 move for an order authorizing alternative service on the four foreign-based Defendants—Audi  
 27 Aktiengesellschaft, Bayerische Motoren Werke Aktiengesellschaft, Dr. Ing. H.C. F. Porsche AG,  
 28 and Volkswagen Aktiengesellschaft—pursuant to Rule 4(f)(3) shortly. *See* Fed. R. Civ. P. 4(f)(3)

1 (permitting service “by other means not prohibited by international agreement, as the court  
 2 orders”). Defendants cannot reasonably claim any prejudice would result from proceeding with  
 3 the initial CMC where service is largely, though not entirely, complete. This is particularly true  
 4 given the as-yet unserved Defendants likely share counsel with Defendants which already have  
 5 been served.

6 Furthermore, granting Defendants’ motion to reschedule the CMC based on the status of  
 7 service would invite delay tactics in class actions involving foreign defendants, such as this one.  
 8 Defendants are often named at various stages of litigation as discovery proceeds, and the fact that  
 9 Plaintiffs have not served all potential Defendants does not justify rescheduling the CMC in this  
 10 action. If courts waited until all defendants in complex actions were served to hold an initial  
 11 CMC, such conferences would be routinely delayed until months or years after the filing of the  
 12 initial complaint. This sort of delay cannot be squared with the primary object of Federal Rule of  
 13 Civil Procedure 1, which is to provide for a “just, speedy and inexpensive determination” of  
 14 actions. *See Fed. R. Civ. P. 1; see also Benson v. Asurion Corp.*, No. CIV.A 3:10-0526, 2010 WL  
 15 2253533, at \*1 (M.D. Tenn. June 1, 2010) (“[T]he fact that Defendant may have been served but  
 16 an answer is not yet due, shall not constitute good cause for continuing the  
 17 Initial Case Management Conference.”).<sup>1</sup>

18 **C. Conclusion**

19 For the foregoing reasons, the Court should deny Defendants’ administrative motion to  
 20 reschedule the upcoming CMC.

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24 <sup>1</sup> In addition, on June 14, 2022, Plaintiffs requested that counsel for Audi of America, LLC and  
 25 Volkswagen Group of America, Inc. accept service on behalf of Audi Aktiengesellschaft and  
 26 Volkswagen Aktiengesellschaft. On July 8, 2022, counsel for Audi of America, LLC and  
 27 Volkswagen Group of America, Inc. advised Plaintiffs that they were not authorized to do so.  
 Defendants should not now be permitted to rely on their lack of cooperation regarding service as  
 a means of delay.

28

1 Date: August 15, 2022

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